



LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2018-7]

Filing of Schedules by Rights Owners and Contact Information by Transmitting Entities Relating to Pre-1972 Sound Recordings

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: Pursuant to the Classics Protection and Access Act, title II of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (“MMA”), the U.S. Copyright Office is adopting as final a rule regarding the filing of schedules by rights owners listing their sound recordings fixed before February 15, 1972, and the filing of contact information by entities publicly performing these sound recordings by means of digital audio transmission. This rule largely finalizes the interim rule published on October 16, 2018, with some adjustments adopted in response to public comment.

DATES: The effective date of the final rule is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

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SUPPLEMENTARY INFORMATION:

I. Background

On October 16, 2018, the Copyright Office issued an interim rule with request for comments regarding certain filings necessitated by title II of the MMA, the Classics Protection and Access Act (the “Act”).¹ As explained in the interim rule, the Act created chapter 14 of the copyright law, title 17, United States Code, which, among other things, extends remedies for copyright infringement to owners of sound recordings fixed before February 15, 1972 (“Pre-1972 Sound Recordings”). Under the provision, rights owners may be eligible to recover statutory damages and/or attorneys’ fees for the unauthorized use of their Pre-1972 Sound Recordings if certain requirements are met.

Specifically, to be eligible for these remedies, rights owners must typically file schedules listing their Pre-1972 Sound Recordings (“Pre-1972 Schedules”) with the Copyright Office, which are then indexed into the Office’s public records.² The remedies are only available for unauthorized uses of a sound recording that have occurred more than 90 days after indexing.³ Pre-1972 Schedules must include the name of the rights owner, title, and featured artist for each recording listed, and “such other information, as practicable, that the Register of Copyrights prescribes by regulation.”⁴ The filing requirement “is designed to operate in place of a formal registration requirement that normally applies to claims involving statutory damages.”⁵ In addition, the Pre-1972 Schedules are important to the Act’s new exemption for noncommercial uses of Pre-1972 Sound Recordings that are not being commercially exploited.⁶ Under that provision,

¹ 83 FR 52150 (Oct. 16, 2018).

² 17 U.S.C. 1401(f)(5)(A)(i)(I)–(II).

³ *Id.* at 1401(f)(5)(A)(i)(II).

⁴ *Id.* at 1401(f)(5)(A)(i)(I).

⁵ H.R. REP. NO. 115-651, at 16 (2018); *see* S. REP. NO. 115-339, at 18 (2018).

⁶ 17 U.S.C. 1401(c)(1)(A)(i). The Copyright Office has issued a separate notice of proposed rulemaking regarding the exception for noncommercial uses. 84 FR 1661 (Feb. 5, 2019).

persons seeking to use the exemption are exempt from liability for unauthorized use if they make a “good faith, reasonable search for” a given sound recording in the Office’s records of Pre-1972 Schedules before determining that the recording is not being commercially exploited.⁷ In establishing a filing mechanism for Pre-1972 Schedules, the Office must also provide a means for individuals to request and receive timely notification when such filings are indexed into the Office’s public record.⁸

Under the Act, rights owners must also provide specific notice of unauthorized use to certain entities that were previously transmitting Pre-1972 Sound Recordings before pursuing certain remedies against them. To be entitled to receive direct notice of unauthorized activity from a rights owner, an entity must have been publicly performing a Pre-1972 Sound Recording by means of digital audio transmission at the time of enactment of section 1401 and must file its contact information with the Copyright Office within 180 days of enactment, that is, by April 9, 2019.⁹ Where a valid notice of contact information has been filed, the rights owner may be eligible to obtain statutory damages and/or attorneys’ fees only after directly sending the transmitting entity a notice stating that it is not legally authorized to use the Pre-1972 Sound Recording, and identifying the Pre-1972 Sound Recording in a schedule conforming to the requirements by the Office for filing Pre-1972 Schedules.¹⁰ For any eligible transmitting entities that do not file contact information by April 9, 2019, rights owners may seek statutory damages and/or

⁷ *Id.* at 1401(c)(1)(A).

⁸ *Id.* at 1401(f)(5)(A)(ii)(II)–(III).

⁹ *Id.* at 1401(f)(5)(B)(i)–(ii).

¹⁰ *Id.* at 1401(f)(5)(B)(iii). A transmitting entity will be liable only for unauthorized uses occurring 90 days after receipt of the notice. *See id.*

attorneys' fees resulting from unauthorized uses by those entities after filing Pre-1972 Schedules as described above.¹¹

The interim rule established regulations governing each of these new filing mechanisms: the filing of Pre-1972 Schedules by rights owners, the filing of contact information by entities publicly performing these sound recordings by means of digital audio transmission, and specifying how individuals may request timely notification of the filing of Pre-1972 Schedules with the Office.¹² In response to its request for public comment, the Office received one joint comment from the American Association of Independent Music ("A2IM"), Recording Industry Association of America, Inc. ("RIAA"), and SoundExchange, Inc.¹³ Having reviewed and carefully considered this comment, the Office is now adopting the interim rule as final, with a few adjustments as described below.

II. Final Rule

A. Pre-1972 Schedules

1. Content of Pre-1972 Schedules

Under the interim rule, rights owners desiring to file Pre-1972 Schedules with the Office must use a form provided on the Office's website,¹⁴ which is an Excel spreadsheet template. This format allows the Office to timely ingest the Pre-1972 Schedules and index them into an online searchable database available to prospective users, including

¹¹ H.R. REP. NO. 115-651, at 16 (2018); *see* S. REP. NO. 115-339, at 19 (2018).

¹² 83 FR 52150, 52153–54 (Oct. 16, 2018).

¹³ The comments submitted in response to the interim rule can be found on the Copyright Office's website at <https://www.copyright.gov/rulemaking/pre1972-soundrecordings-schedules/>.

¹⁴ 37 CFR 201.35(c).

persons who may otherwise wish to make noncommercial uses of these works, and the general public.¹⁵

Currently, for each sound recording, the Pre-1972 Schedule must include the rights owner's name, sound recording title, and featured artist.¹⁶ Rights owners may also include additional optional information pursuant to the instructions on the form and the Office's website, namely, album title information, alternate sound recording title(s), publication date, label, and rights owner's contact information.¹⁷ In their joint comments, A2IM, RIAA, and SoundExchange request that the following fields be added to the Office's Pre-1972 Schedule form: International Standard Recording Code ("ISRC"), sound recording version, and alternate artist name.¹⁸ They also ask the Office to group the three required fields together from left to right on the form, followed by the optional fields to the right.¹⁹

These suggestions have been adopted by the final rule. The Office agrees that including the ISRC will help to distinguish between different Pre-1972 Sound Recordings by the same artist with the same title, including with respect to the new exemption for noncommercial uses of Pre-1972 Sound Recordings that are not being commercially exploited.²⁰ Accordingly, the final rule requires the ISRC to be included for each recording listed in a Pre-1972 Schedule, if known by the filer and practicable to include.

¹⁵ The Office received no comments regarding the Excel spreadsheet format or considering a Pre-1972 Schedule to be "indexed" once it is made publicly available through the Office's online database of Pre-1972 Schedules. *See* 83 FR at 52151. The database of Pre-1972 Schedules is available on the Office's website at <https://copyright.gov/music-modernization/pre1972-soundrecordings/search-soundrecordings.html>.

¹⁶ 37 CFR 201.35(d)(1).

¹⁷ *See id.* at 201.35(d)(3).

¹⁸ A2IM, RIAA & SoundExchange Comments at 7.

¹⁹ *Id.* at 8.

²⁰ 17 U.S.C. 1401(c)(1)(A)(i).

Similarly, the final rule permits versions and alternate artist names to be provided on an optional basis.²¹ While the final rule otherwise retains the required and optional fields from the interim rule, the Office has revised its Pre-1972 Schedule form so that the fields for rights owner's name, the sound recording title, and the featured artist are grouped together from left to right, followed on the right by the ISRC and the optional fields.

As noted by the Office in its rulemaking regarding the noncommercial use exception to unauthorized uses of Pre-1972 Sound Recordings, classical music sound recordings frequently require more information to sufficiently identify the sound recording.²² The final rule adopts a definition of "title" and "featured artist(s)" for pre-1972 sound recordings of classical music, including opera, as recently proposed in the noncommercial use exception rulemaking.²³ Because the Office is proposing that users search the database of Pre-1972 Schedules using specialized terms for this genre to locate these recordings, this rule harmonizes the terms that rights owners are asked to list on the schedules. To the extent that the rule adopted through the noncommercial use rulemaking adjusts this definition, the Office may further reconcile this language.

Regarding the name of the rights owner, A2IM, RIAA, and SoundExchange note that "there has been considerable consolidation in the recorded music business" and that because many Pre-1972 Sound Recordings were originally released on labels no longer in existence, the rights to these sound recordings "are sometimes exercised by a label in existence today in its own name on behalf of the original owner."²⁴ They ask that the

²¹ The version of a Pre-1972 Sound Recording may include, among other things, its length of playing time or location of performance.

²² 84 FR 1661, 1669 (Feb. 5, 2019).

²³ *Id.* at 1676.

²⁴ A2IM, RIAA & SoundExchange Comments at 9.

Office “borrow” from the language in 17 U.S.C. 1401(c)(6)(B)(i) and for each Pre-1972 Sound Recording listed in a Pre-1972 Schedule, allow “a person ‘authorized to act on behalf of the rights owner’” to be listed instead of the rights owner’s name.²⁵

Because chapter 14 expressly requires that the Pre-1972 Schedule filed with the Office include the “rights owner of the sound recording,”²⁶ the Office declines to make this adjustment. Section 1401(c)(6)(B)(i), which concerns civil penalties for persons fraudulently filing opt-out notices for noncommercial uses, necessarily relates to the person *filing* the opt-out notices, rather than the requirement to identify a particular rights owner.²⁷ The legislative history also indicates that the Office’s database should reflect “works by copyright owners.”²⁸ The final rule does clarify, however, that an authorized agent of a rights owner may submit the filing on behalf of the rights owner.

A2IM, RIAA, and SoundExchange also assert that the Office’s database of Pre-1972 Schedules should allow for “robust search[ing],” including “fuzzy searching” (*e.g.*, search results yield results for common misspellings) and “wildcard searching” (*i.e.*, allowing a user to search on a truncated version of a word with a wildcard character, such as an asterisk).²⁹ The database of Pre-1972 Schedules already allows for wildcard searching by using an asterisk to fill in partial words. The Office has updated the search instructions on its database webpage so users are aware of this search capability. While the current technology does not permit “fuzzy” searching, that limitation is also noted on

²⁵ *Id.*

²⁶ 17 U.S.C. 1401(f)(5)(A)(i)(I).

²⁷ *Id.* at 1401(c)(6)(B)(i). The final rule retains the requirements that the individual submitting the Pre-1972 Schedule must certify that she has appropriate authority to submit the schedule and that all information submitted to the Office is true, accurate, and complete to the best of the individual’s knowledge, and is made in good faith.

²⁸ H.R. Rep. No. 115-651 at 16; S. Rep. No. 115-339 at 19.

²⁹ A2IM, RIAA & SoundExchange Comments at 8–9.

the webpage to guide user expectations. The following fields in the Office’s database of Pre-1972 Schedules are now searchable: rights owner, sound recording title (which includes alternate titles), album, label, featured artist (which includes alternate artist name(s)), and ISRC. A user can export and download the search results based on those fields into an Excel spreadsheet to view (and search) additional data.

2. Correcting or Supplementing Information Included in Filed Pre-1972

Schedules

The interim rule did not create a mechanism for rights owners to correct limited mistakes or supplement information regarding sound recordings included in Pre-1972 Schedules indexed into the Office’s public record. Instead, the Office invited public comment on whether and how to provide a mechanism for the correction of mistakes or for supplementing information in Pre-1972 Schedules, including the potential effect on a Schedule’s index date and how to keep administrative costs low.³⁰

In response, A2IM, RIAA, and SoundExchange maintain that the Office should allow rights owners (or their authorized agents) to correct limited mistakes, as well as supplement information included in already-filed Pre-1972 Schedules, without affecting a schedule’s index date.³¹ They note that limited mistakes may occur where Pre-1972 Schedules list thousands of sound recordings, and that allowing supplementation will benefit users of the Office’s database of Pre-1972 Schedules—“particularly those

³⁰ 83 FR at 52152.

³¹ A2IM, RIAA & SoundExchange Comments at 5. Commenters did not address the Office’s level of review of Pre-1972 Schedules under the interim rule, and the final rule retains a provision adopted on an interim basis specifying that the Office will not review Pre-1972 Schedules for legal sufficiency, interpret their content, or screen them for errors or discrepancies. Rather, the Office’s review is limited to whether the procedural requirements established by the Office (including payment of the proper filing fee) have been met.

performing good faith, reasonable searches in connection with the potential noncommercial use of a pre-72 recording” under section 1401(c)—“because users will be able to search a greater number of fields and use a wider array of search terms, thus increasing the likelihood of finding a match if one exists.”³² They suggest that rights owners should be allowed to file Pre-1972 Schedules with the required fields to secure an index date, and supplement information for those Pre-1972 Sound Recordings at a later date.³³ They propose having “a secure web portal” that allows rights owners to supplement information and correct mistakes relating to their Pre-1972 Sound Recordings.³⁴

Considering these concerns in light of the purpose of the Pre-1972 Schedules, which operates “in place of a formal registration requirement” for rights owners and also must be searched by users before claiming the noncommercial use exception for these recordings,³⁵ the final rule adopts a provision allowing a rights owner (or her authorized agent) to correct or amplify information regarding a Pre-1972 Sound Recording where that sound recording was included in a Pre-1972 Schedule previously filed by or on behalf of that same rights owner. The rule will operate in a similar, but not identical, manner, to other filings accepted by the Office to correct or amplify previous filings, including supplementary registrations.³⁶ Information regarding a Pre-1972 Sound

³² *Id.*

³³ *Id.* at 4–5.

³⁴ *Id.* at 5–6.

³⁵ H. Rep. No. 115-651 at 16.

³⁶ See U.S. Copyright Office, *About Supplementary Registration*, <https://www.copyright.gov/eco/help-supplementary.html> (last visited Mar. 4, 2019); U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* sec. 1802 (3d ed.2017) (“*Compendium (Third)*”) (describing supplementary registration practices). Amended filings are also permitted for DMCA agent designations, contact information for transmitting entities

Recording may be corrected if the information was incorrect at the time the Pre-1972 Schedule was submitted to the Office, or supplemented to include information that was omitted at the time the Pre-1972 Schedule was submitted to the Office.

The rule provides that the operative index date for a given Pre-1972 Recording will change only in the event that information in one of the statutorily required fields (title, featured artist(s), and rights owner) is amended or amplified. As noted by A2IM, RIAA, and SoundExchange, the index date of a Pre-1972 Schedule is of “critical importance to rights owners, as it starts the running of a 90-day clock after which the listed sound recordings become eligible for statutory damages and attorneys’ fees.”³⁷ To encourage rights owners to supplement optional information regarding their Pre-1972 Sound Recordings, the final rule permits amending or supplementing information for an optional field or ISRC without losing the index date for the relevant Pre-1972 Sound Recording. But because the schedules serve a notice function for prospective licensees and other users of these recordings, the Office concludes that a new index date should attach when information in one of the three statutorily required fields changes, such that the earlier-filed schedule no longer provides the same notice as to those fields.

To ensure transparency, as currently designed, links to filed Pre-1972 Schedules and Supplemental Pre-1972 Schedules (showing their respective index dates) will be provided through the Office’s database under the “More Info” tab for the relevant Pre-1972 Sound Recording. Due to technological constraints in the current database, the

publicly performing pre-1972 sound recordings by means of digital audio transmission, statements of account for cable operators, satellite carriers, or manufacturers or importers distributing digital audio recording devices or media, and notices of digital transmission of sound recording. *See* 37 CFR 201.3(c)(18)–(19), (e)(2), (e)(4) (providing filing fees for such amendments).

³⁷ A2IM, RIAA & SoundExchange Comments at 4.

“Index Date” field displayed on the Copyright Office’s website for a given Pre-1972 Sound Recording will reflect the index date of the latest-filed schedule (which may not govern eligibility for statutory damages if it only amends or supplements information for an optional field). Accordingly, users are cautioned to review the “More Info” tab or download information into an Excel spreadsheet for a given Pre-1972 Sound Recording to determine whether more than one schedule has been filed, which may or may not affect the operative index date.³⁸

Rights owners (or their authorized agents) will be required to file a Supplemental Schedule of Pre-1972 Sound Recordings using a form and instructions specified on the Office’s website. At present, the form is an Excel spreadsheet template. This format is required so that the Office can timely ingest Supplemental Pre-1972 Schedules and index them into the Office’s database of Pre-1972 Schedules.³⁹ For each Pre-1972 Sound Recording for which the rights owner desires to correct or supplement information, the Supplemental Pre-1972 Schedule must include the Copyright Office’s unique identifier assigned to that sound recording in the Office’s database.⁴⁰ Because the data on the Supplemental Pre-1972 Schedule will overwrite the preexisting data displayed and searchable in the Office’s database, for each sound recording, the Supplemental Pre-1972

³⁸ The Office has updated the search instructions on its database web page to note this limitation and guide user expectations.

³⁹ A2IM, RIAA & SoundExchange suggest that a secure web portal be set up allowing owners to supplement their own schedules and correct their own mistakes. *See* A2IM, RIAA & SoundExchange Comments at 5–6. But as they anticipate, current technology precludes this option and in fact, severely limits the operational choices available to implement a supplementary filing option. *Id.* As requested, the Office will consider adjusting this functionality as part of its forthcoming technology upgrades.

⁴⁰ The unique identifier is used by the Office to identify the sound recordings for which information should be updated when the Supplement Pre-1972 Schedule is ingested into the database. It can be located in Office’s database of Pre-1972 Schedules by clicking the “More Info” button in the line entry for a particular sound recording, or by downloading and exporting data for that sound recording into an Excel spreadsheet.

Schedule must include the rights owner's name, sound recording title, featured artist(s), and, if known and practicable, ISRC (inclusive of any corrections or amendments to such information). The Supplemental Pre-1972 Schedule must also include all optional information the rights owner would like to provide to the Copyright Office (including information already provided to the Office on a previously filed Pre-1972 Schedule for that sound recording), inclusive of any corrections or amendments to such information.

Finally, A2IM, RIAA, and SoundExchange request the ability to remove errantly listed recordings, without affecting the index date of the other recordings included on a Pre-1972 Schedule.⁴¹ The final rule will allow a rights owner (or her authorized agent) to remove a Pre-1972 Sound Recording from the Office's database of Pre-1972 Schedules where the sound recording was included in a Pre-1972 Schedule filed by or on behalf of that same rights owner, without affecting the index date of the other recordings included on the schedule. A recording may be removed if there was a substantive defect in the Pre-1972 Schedule regarding the Pre-1972 Sound Recording at the time the Pre-1972 Schedule was submitted to the Office, or, upon a showing of good cause, at the discretion of the Copyright Office. Similar to the Office's process for voluntary cancellation of a copyright registration,⁴² a rights owner (or her authorized agent) will be required to file a Removal Form, using a form and instructions specified on the Office's website. As currently envisioned, a Removal Form may not include more than one Pre-1972 Sound Recording to be deleted, and must include the sound recording title, featured artist(s), and the Copyright Office's unique identifier assigned to that sound recording in the Office's database. The Office will keep a record of Pre-1972 Sound Recordings removed from the

⁴¹ A2IM, RIAA & SoundExchange Comments at 5.

⁴² See *Compendium* (Third) sec. 1804(E).

Office's database, and a timestamp of when each deletion occurs. Once removed, the sound recording is no longer considered "indexed" for purposes of eligibility to recover statutory damages and/or attorneys' fees for the unauthorized use of that sound recording, or included in the Office's database to preclude a user from taking advantage of the noncommercial use exception.⁴³ The rights owner (or her agent) would need to file a new Pre-1972 Schedule containing the sound recording to become eligible to recover statutory damages and/or attorneys' fees, or to preclude a user from taking advantage of the noncommercial use exception regarding that sound recording.

3. Filing Fees

A2IM, RIAA, and SoundExchange request the ability to pay filing fees for Pre-1972 Schedules by credit card, check, money order, or bank draft, instead of by deposit account, as instructed on the Office's website.⁴⁴ In consideration of such comments, the Office will allow filers to pay filing fees for Pre-1972 Schedules, Supplemental Pre-1972 Schedules, and Removal Forms using either a credit card or a deposit account with the Office. So that schedules may be submitted to the Office electronically, a rights owner currently submits her Pre-1972 Schedule via email, along with a cover sheet providing her deposit account information to pay the filing fee. Under the final rule, if a filer wishes to pay using a credit card, instead of providing the deposit account information on the cover sheet, she should indicate her desire to pay by credit card on the cover sheet. The same process will be available for filers wishing to pay using a credit card to file

⁴³ 17 U.S.C. 1401(f)(5)(A)(i)(I)–(II); *id.* at 1401(c)(1)(A)(i).

⁴⁴ A2IM, RIAA & SoundExchange Comments at 9–10; *Requirements and Instructions for Completing and Submitting Schedules of Pre-1972 Sound Recordings*, U.S. Copyright Office, <https://www.copyright.gov/music-modernization/pre1972-soundrecordings/schedulefiling-instructions.html>.

Removal Forms. For privacy and security reasons, the filer should *not* provide credit card information on the cover sheet or Removal Form. Rather, the Office will call the filer for the credit card information. Because the processing of Pre-1972 Schedules, Supplemental Pre-1972 Schedules, and Removal Forms will not occur until after the Office has obtained credit card information from the filer, filers are urged to provide accurate contact information on the cover sheet or Removal Form and to respond to the Office in a timely manner.

Because the Office anticipates that the processing and indexing of Supplemental Pre-1972 Schedules will be similar to originating Pre-1972 Schedules, it is setting the fee for supplemental filings at the same amount. Similarly, because the Office anticipates that processing a Removal Form will be similar to the processing of a Pre-1972 Schedule including a single sound recording, it is setting the fee to file a Removal Form at the same amount. In line with its general approach to fee-setting, the Office will consider whether adjustment is necessary after data regarding these filings are available.

As a technical change, the final rule also clarifies that the fee charged for Pre-1972 Schedules and Supplemental Pre-1972 Schedules is per sound recording, not per title, since the Copyright Office is encouraging rights owners to list alternate titles of recordings on schedules to improve the public record.

C. Recordation of Transfers of Ownership Pertaining to Pre-1972 Sound Recordings

The final rule retains the language of the interim rule providing that, if ownership of a Pre-1972 Sound Recording changes after its inclusion in a Pre-1972 Schedule filed with the Office, the Office will consider the schedule to be effective as to any successor

in interest.⁴⁵ Accordingly, a successor in interest may, but is not required, to file a new schedule.

The Office invited public comment on whether it should record transfers of rights ownership and other documents pertaining to a Pre-1972 Sound Recording, even though they are not transfers of copyright ownership or documents pertaining to a copyright under 17 U.S.C. 205.⁴⁶ A2IM, RIAA, and SoundExchange responded that the Office should accept for recordation transfer documents and other documents pertaining to Pre-1972 Sound Recordings, contending that accepting such voluntarily-submitted information would serve a public notice function.⁴⁷

The Office concludes that it may record transfers of ownership pertaining to Pre-1972 Sound Recordings through its established recordation processes.⁴⁸ Section 1401(h)(1) provides that certain provisions relating to the transfers of copyright ownership set forth in sections 201 and 204 (including requirements for execution of transfers) of the Copyright Act “shall apply to a transfer” by a pre-1972 rights owner “to the same extent as with respect to a transfer of copyright ownership.”⁴⁹ In turn, section

⁴⁵ See A2IM, RIAA & SoundExchange Comments at 2-3 and fn. 1 (supporting interim rule, noting it parallels the registration requirement for copyrighted works, which are effective for purposes of eligibility for statutory damages and attorneys’ fees as to successors in interest).

⁴⁶ 83 FR at 52152.

⁴⁷ A2IM, RIAA & SoundExchange Comments at 2–3.

⁴⁸ A transfer of ownership “is an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.” 17 U.S.C. 101.

⁴⁹ *Id.* at 1401(h)(1)(A) (“[S]ubsections (d) and (e) of section 201 and section 204 shall apply to a transfer described in subsection (l)(2)(B) to the same extent as with respect to a transfer of copyright ownership.”); see *id.* at 1401(l)(2) (Defining “rights owner” in relevant part as “any person to which a right to enforce a violation of this section may be transferred, in whole or in part” under “subsections (d) and (e) of section 201 and section 204). Notably, chapter 14 alternatively defines “rights owner” as “the person that has the exclusive right to reproduce a sound recording under the laws of any State, as of the day before the date of enactment of this

205 authorizes the Copyright Office to record “transfer[s] of copyright ownership” under certain conditions, and the effective recordation of these documents provides constructive notice of the facts stated in the recorded document.⁵⁰ The Office has previously concluded that “any transfer that is valid under section 204 should be recordable under section 205.”⁵¹ The Office concludes that it is prudent and sound for it to similarly accept transfers of ownership pertaining to Pre-1972 Sound Recordings for voluntary recordation into the Office’s public database pursuant to the general recordation requirements set forth in 37 CFR 201.4.⁵² That said, because registration is not available for U.S. Pre-1972 Sound Recordings (instead, the Pre-1972 Schedules operate in lieu of a registration requirement), it is unclear whether recordation can provide the same statutory benefits of constructive notice and priority between conflicting transfers under section 205.⁵³

Accordingly, the final rule mimics other Office regulations applying the Office’s general recordation rules to certain types of documents that do not actually pertain to copyrighted works, namely, those concerning mask works under chapter 9 and vessel

section.” *Id.* It therefore does not incorporate other provisions of chapter 2, such as those pertaining to initial ownership, works made for hire, contributions to collective works, or a mechanism for termination of transfers and licenses granted by the author.

⁵⁰ *Id.* at 205.

⁵¹ *Modernizing Copyright Recordation: Interim Rule*, 82 FR 52213, 52215 (Nov. 13, 2017).

⁵² The relevant recordation regulation provides: “The fact that the Office has recorded a document is not a determination by the Office of the document’s validity or legal effect. Recordation of a document by the Copyright Office is without prejudice to any party claiming that the legal or formal requirements for recordation have not been met, including before a court of competent jurisdiction.” 37 CFR 201.4(g).

⁵³ 17 U.S.C. 205(c)(2) (requiring that “registration has been made for the work” for constructive notice to attach).

designs under chapter 13.⁵⁴ Because chapter 14 does not incorporate sections 203 or 304(c) or (d), this rule does not permit recordation of notices of termination of transfers and licenses pursuant to those sections and 37 CFR 201.10.

Finally, A2IM, RIAA, and SoundExchange request, if practicable, that transfers of rights ownership and other documents be cross-referenced against an earlier-filed Pre-1972 Schedule to maximize the benefit of recordation.⁵⁵ While the Office supports the goal of facilitating improved chain-of-title information for these documents, as well as recorded documents more generally,⁵⁶ its current technology does not permit linking recorded documents with its database of Pre-1972 Schedules. Meanwhile, the Office will provide notice in connection with its database of Pre-1972 Schedules that information pertaining to subsequent changes in ownership may be found in its public catalog; as noted, the Office will also accept additional schedules from successors-in-interest.⁵⁷

D. Notices of Contact Information

Under the interim rule, transmitting entities may currently file a Notice of Contact Information with the Office using a *pay.gov* form and following instructions specified on the Office's website.⁵⁸ A2IM, RIAA, and SoundExchange requested that individuals should "be permitted to receive timely notification of such filings by subscribing to a

⁵⁴ 37 CFR 211.2 (mask works); *id.* at 212.6 (vessel designs); *see Compendium* (Third) sec. 1203 ("Mask works are not protected by copyright law."); *id.* at 1302 ("Vessel design protection is not a form of copyright protection.").

⁵⁵ A2IM, RIAA & SoundExchange Comments at 3–4.

⁵⁶ *See also* 83 FR 52336, 52343 (Oct. 17, 2018) (soliciting information on how Copyright Office modernization should expand the online public record to connect registration and recordation records and provide improved chain of title information).

⁵⁷ *See* A2IM, RIAA & SoundExchange Comments at 4 (requesting same).

⁵⁸ 37 CFR 201.36(c); U.S. Copyright Office, *Interim Rule Regarding Pre-1972 Sound Recordings*, <https://www.copyright.gov/rulemaking/pre1972-soundrecordings-schedules/> (last visited, Mar. 1, 2019).

weekly email notification service,” similar to the email notification service instituted by the Office regarding recently-indexed Pre-1972 Schedules.⁵⁹ The MMA, however, specifically requires a notification mechanism for indexed Pre-1972 Schedules⁶⁰; there is no similar requirement relating to Notices of Contact Information. Moreover, because the Office may not accept Notices of Contact Information after April 9, 2019,⁶¹ establishing a notification service that would be operational for only a short period would not be an efficient use of resources.⁶² The Office’s online searchable directory currently allows searching by the name of a transmitting entity (and any alternate names), which should provide an easy way to determine whether a transmitting entity has filed a Notice of Contact Information.

In sum, apart from clarifying that the date of filing of a Notice of Contact Information (like Pre-1972 Schedules) is the date when a proper submission, including the prescribed fee, is received in the Copyright Office, the final rule otherwise adopts in full the interim regulations governing Notices of Contact Information.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Final regulations

⁵⁹ A2IM, RIAA & SoundExchange Comments at 9. The Office notes that commenters did not raise concerns with the notification service instituted by the Office regarding recently-indexed Pre-1972 Schedules.

⁶⁰ 17 U.S.C. 1401 (f)(5)(A)(ii)(II)–(III).

⁶¹ *Id.* at 1401(f)(5)(B)(ii).

⁶² As of the date of this notice, only one Notice of Contact Information has been filed with the Office. U.S. Copyright Office, Directory of Notices, <https://www.copyright.gov/music-modernization/pre1972-soundrecordings/notices-contact-information.html>.

For the reasons set forth above, the interim rule amending 37 CFR part 201, which was published in the Federal Register at 83 FR 52150, on October 16, 2018, is adopted as final with the following changes:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Amend § 201.3 as follows:

a. Revise paragraph (c)(20).

b. Redesignate paragraphs (c)(21) and (c)(22) as paragraphs (c)(22) and (c)(23), respectively.

c. Add paragraph (c)(21).

The addition and revisions read as follows:

§201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) * * *

	Fees
Registration, recordation and related services	(\$)

* * * * *

(20) Schedule of pre-1972 sound recordings, or supplemental schedule

of pre-1972 sound recordings (single sound recording) 75

Additional sound recordings (per group of 1 to 100 sound

recordings) 10

(21) Removal of pre-1972 sound recording from Office's database of indexed schedules (single sound recording)

75

* * * * *

3. Amend §201.35 as follows:

a. Revise paragraph (a).

b. Add paragraph (b)(3).

c. Revise paragraph (c).

d. Redesignate paragraphs (d), (e), (f), (g), (h), and (i) as paragraphs (f), (g), (h), (i), (j), and (k), respectively.

e. Add paragraphs (d) and (e).

f. Revise newly designated paragraphs (f) and (h).

g. Add paragraph (l).

The additions and revisions read as follows:

§201.35 Schedules of Pre-1972 Sound Recordings; Recordation of Transfers and Other Documents Pertaining to Pre-1972 Sound Recordings.

(a) *General.* This section prescribes the rules under which rights owners, pursuant to 17 U.S.C. 1401(f)(5)(A), may file schedules listing their pre-1972 sound recordings with the Copyright Office to be eligible for statutory damages and/or attorneys' fees for violations of 17 U.S.C. 1401(a). This section also prescribes the rules for recordation of documents pertaining to the transfer of ownership of pre-1972 sound recordings.

(b) * * *

(3) For pre-1972 sound recordings of classical music, including opera:

(i) The *title* of the pre-1972 sound recording means, to the extent applicable and known by the rights owner, any and all title(s) of the sound recording and underlying musical composition known to the rights owner, and the composer and opus or catalogue number(s) of the underlying musical composition; and

(ii) The *featured artist(s)* of the pre-1972 sound recording means, to the extent applicable and known by the rights owner, the featured soloist(s), featured ensemble(s), featured conductor, and any other featured performer(s).

* * * * *

(c) *Form and submission.* A rights owner seeking to comply with 17 U.S.C. 1401(f)(5)(A) (or her authorized agent) must submit a schedule listing the owner's pre-1972 sound recordings, or amend such a schedule, using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. The Office may reject any submission that fails to comply with these requirements.

(d) *Amendment or supplementation.* A rights owner (or her authorized agent) may amend or supplement information regarding a pre-1972 sound recording included in a schedule filed under paragraph (c) of this section by or on behalf of the same rights owner.

Information may be corrected if it was incorrect at the time the pre-1972 schedule was submitted to the Office, or supplemented to include information that was omitted at the time the schedule was submitted to the Office. For each recording included in a schedule filed under this paragraph, where the information specified in paragraph (f)(1) of this section does not change from the previously-filed schedule, the date the previously-filed

schedule was indexed into the Office's public records remains operative for purposes of 17 U.S.C. 1401(f)(5)(A)(i)(II).

(e) *Removal of record.* A rights owner (or her authorized agent) may remove information regarding a pre-1972 sound recording from the Office's database of schedules if the sound recording was included in a schedule filed under paragraph (c) of this section by or on behalf of the same rights owner, using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. Removal may be made if there was a substantive defect in the pre-1972 schedule regarding the specific sound recording at the time the schedule was submitted to the Office, or, upon a showing of good cause, at the discretion of the Copyright Office. Once a pre-1972 sound recording has been removed from the Office's database of schedules of pre-1972 sound recordings, the sound recording is no longer considered indexed into the Office's records.

(f) *Content.* A schedule of pre-1972 sound recordings filed under paragraphs (c) or (d) of this section shall contain the following:

- (1) For each sound recording listed, the right's owner name, sound recording title, and featured artist(s);
- (2) If known and practicable, for each sound recording listed, the International Standard Recording Code ("ISRC");
- (3) A certification that the individual submitting the schedule of pre-1972 sound recordings has appropriate authority to submit the schedule and that all information submitted to the Office is true, accurate, and complete to the best of the individual's knowledge, information, and belief, and is made in good faith; and

(4) For each sound recording listed, the rights owner may opt to include additional information as permitted and in the format specified by the Office's form or instructions, such as the alternate title, alternate artist name(s), album, version, label, or publication date.

* * * * *

(h) *Legal sufficiency of schedules.* The Copyright Office does not review schedules submitted under paragraphs (c) or (d) of this section for legal sufficiency, interpret their content, or screen them for errors or discrepancies. The Office's review is limited to whether the procedural requirements established by the Office (including payment of the proper filing fee) have been met. Rights owners are therefore cautioned to review and scrutinize schedules to assure their legal sufficiency before submitting them to the Office.

* * * * *

(l) *Recordation of transfers.* The conditions prescribed in §201.4 of this chapter for recordation of transfers of copyright ownership are applicable to the recordation of documents relating to the transfer of ownership of pre-1972 sound recordings under 17 U.S.C. chapter 14.

* * * * *

5. Amend §201.36 as follows:

a. Redesignate paragraph (e) as paragraph (f).

b. Add paragraph (e) to read as follows:

§201.36 Notices of contact information for transmitting entities publicly performing pre-1972 sound recordings.

* * * * *

(e) *Filing Date*. The date of filing of a notice of contact information pursuant to this section is the date when a proper submission, including the prescribed fee, is received in the Copyright Office.

* * * * *

Dated: March 11, 2019.

Karyn A. Temple,
Acting Register of Copyrights and
Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,
Librarian of Congress.

[BILLING CODE 1410-30-P]

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